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A Santamil Selvi a/p Alau Malay @ Anna Malay & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(IM)(NCVC)-20–01 OF 2015
ZAWAWI SALLEH, ABDUL RAHMAN SEBLI AND ZAMANI A RAHIM JJCA
C 3 JUNE 2015

Civil Procedure — Appeal — Notice of appeal — One single notice of appeal filed against eight separate decisions to strike out appellants' claim — Whether notice of appeal bad in law — Whether there was sufficient compliance with statutory requirement — Whether notice of appeal improper for being ambiguous and uncertain — Whether defect in notice could be cure

D

The appellants had filed a civil suit against nine respondents, who included the serving Prime Minister of Malaysia ('the first respondent') and his wife ('the second respondent') amongst others, for the tort of conspiracy to cause injury by unlawful means. The respondents, through their various lawyers, filed eight separate applications pursuant to O 18 r 19(1) of the Rules of Court 2012 ('the ROC') to strike out the appellants' writ and statement of claim on the common ground that the claim did not disclose any reasonable cause of action, was scandalous, frivolous and vexatious and/or an abuse of the court process. The applications were supported by the affidavits of the various respondents or their representatives. After hearing arguments, the trial judge allowed the respondents' applications and struck out the writ and statement of claim with two different orders on costs. The appellants then filed a notice of appeal appealing against the whole of the decision to strike out their claims. The respondents have now filed seven separate notices of motion to have the appeal struck out on the ground that the notice of appeal was bad in law. It was the respondents' case that since the High Court had issued seven sealed orders in respect of the O 18 r 19(1) applications, seven notices of appeal should have been filed by the appellants instead of only one. In response the appellants argued that even though the hearing before the High Court involved separate applications by different respondents, the hearing of the matter took place simultaneously and the judgment of the High Court was embodied in one single written grounds of judgment. As such the appellants concluded that a single notice of appeal encompassing all the orders made was perfectly in order.

E F G H I

Held, allowing the applications and striking out the appeal with costs:

(1) It is a statutory requirement that the notice of appeal should be in the prescribed Form 1 of the Rules. In the present case, more than one decision was given by the High Court in favour of nine different applicants arising from eight separate and distinct applications. As such, it was imperative for the appellants to set out the details of each and every one of the decisions that they were appealing against. It was not sufficient for the appellants to state in general terms in a single notice of appeal that their appeal was against the whole of the decision without specifying the particulars of the decisions appealed against. In the circumstances there was insufficient compliance with the statutory requirement to set out the details. It was misleading for the appellants to refer to the eight decisions as being a decision against all the respondents when in one respect at least the decisions were not similar, in that the trial judge made two different order on costs. The fact that only one grounds of decision was delivered did not alter the fact that eight separate decisions were given (see paras 11–18).

(2) It is an undisputed fact that the eight striking out applications were premised on different facts, different issues and different arguments by different lawyers. In addition there were seven different affidavits filed by the different sets of solicitors acting for each of the respondents. Each of the eight applications were also subject to different considerations by the trial judge as can be seen from the grounds of judgment. Further, although all eight striking-out applications were made pursuant to O 18 r 19(1) of the ROC, not all were based on the same paragraphs of the sub-rule. The eight separate applications were also filed on different dates and given different registration numbers by the High Court. In the circumstances it was a mere procedural convenience that the eight applications were heard together. Against this backdrop, the single notice of appeal filed by the appellants would beg the question as to which of the eight decisions the appellants were appealing against (see paras 19–21).

(3) The authorities relied upon by the appellants in opposing the applications were of no real assistance in determining the issues raised in the present appeal because the facts in those cases were materially different and also because the parts of the case-law relied upon did not form part of the ratio decidendi of the cases. Although the *Berjaya Development Sdn Bhd v Keretapi Tanah Melayu Sdn Bhd* [2014] 4 MLJ 606 case appeared to be favourable to the appellants, the court in that case went on to hold that the filing of one notice of appeal in respect of three decisions was improper for being ambiguous and uncertain. Similarly the present notice of appeal gave the impression that the appeal was against one decision only involving all the respondents. It did not convey with sufficient clarity which particular decision favouring which particular respondent the appellants were appealing against. This made the notice bad for ambiguity and uncertainty (see paras 24–25 & 27–30).

(4) The defect in the notice of appeal was fatal and could not be cured by O 1A of the ROC because it went to the jurisdiction of the court. The objections raised by the respondents were premised on a statutory requirement, a condition precedent to entertaining the present appeal and not a mere irregularity that could be waived. As such, the appellants should have either filed seven separate notices of appeal or alternatively filed one notice of appeal setting out the details of each decision appealed against (see paras 31–32).

[Bahasa Malaysia summary

Perayu-perayu telah memfailkan tindakan sivil terhadap sembilan responden, termasuk antara lain Perdana Menteri Malaysia ('responden pertama') dan isterinya ('responden kedua'), untuk tort persubahatan menyebabkan kecederaan dengan cara yang salah di sisi undang-undang. Responden-responden melalui pelbagai peguam, memfailkan lapan permohonan berasingan berikutan A 18 k 19(1) Kaedah-Kaedah Mahkamah 2012 ('KKM') untuk membatalkan writ dan pernyataan tuntutan perayu-perayu atas alasan biasa bahawa tuntutan tidak mengemukakan apa-apa kausa tindakan munasabah, bersifat skandal, remeh dan menyusahkan dan/atau menyalahguna proses mahkamah. Permohonan-permohonan disokong oleh afidavit pelbagai responden atau wakil mereka. Selepas mendengar hujahan, hakim perbicaraan membenarkan permohonan-permohonan responden-responden dan membatalkan writ dan pernyataan tuntutan dengan dua perintah berbeza ke atas kos. Perayu-perayu kemudiannya memfailkan notis rayuan merayu terhadap keseluruhan keputusan untuk membatalkan tuntutan mereka. Responden-responden sekarang memfailkan tujuh notis usul berasingan untuk membatalkan rayuan atas alasan bahawa notis rayuan adalah salah dari segi undang-undang. Adalah kes responden-responden bahawa memandangkan Mahkamah Tinggi telah mengeluarkan tujuh perintah yang dimasuki berkaitan permohonan A 18 k19(1), tujuh notis rayuan patut difailkan oleh perayu-perayu bukannya hanya satu. Dalam jawapan perayu-perayu berhujah bahawa walaupun pendengaran di hadapan Mahkamah Tinggi melibatkan permohonan-permohonan berasingan oleh responden-responden berlainan, pendengaran perkara mengambil tempat pada masa yang sama dan penghakiman Mahkamah Tinggi terangkum dalam satu alasan penghakiman bertulis tunggal. Oleh itu perayu-perayu memutuskan bahawa notis rayuan tunggal yang merangkumi kesemua perintah yang dibuat adalah teratur.

Diputuskan, membenarkan permohonan-permohonan dan membatalkan rayuan dengan kos:

(1) Ia adalah kehendak statutori bahawa notis rayuan patut berada dalam Borang 1 KKM. Dalam kes ini lebih daripada satu keputusan diberikan oleh Mahkamah Tinggi memihak sembilan pemohon-pemohon

berlainan yang berbangkit daripada lapan permohonan berasingan dan berbeza. Dengan itu, imperatif untuk perayu-perayu menetapkan butir-butir setiap salah satu daripada keputusan yang mereka rayukan. Ia tidak mencukupi untuk perayu-perayu menyatakan dalam terma am dalam notis rayuan tunggal bahawa rayuan mereka adalah terhadap seluruh keputusan tanpa menyatakan butir-butir yang dirayukan. Dalam keadaan ini terdapat pematuhan yang tidak mencukupi dengan kehendak statutori untuk menetapkan butir-butir. Ia adalah penipuan untuk perayu-perayu merujuk kepada kelapan-lapan keputusan sebagai keputusan menentang kesemua responden-responden apabila dalam satu hal sekurang-kurangnya keputusan-keputusan bukan sama, di mana hakim perbicaraan membuat dua perintah berlainan atas kos. Fakta bahawa hanya satu alasan keputusan diputuskan tidak menukar fakta bahawa lapan keputusan berasingan diberikan (lihat perenggan 11–18).

(2) Ia adalah fakta yang tidak dipertikaikan bahawa kelapan-lapan permohonan pembatalan adalah berdasarkan atas fakta berbeza, isu-isu berbeza dan hujahan berbeza oleh peguam-peguam berbeza. Selanjutnya terdapat tujuh afidavit berbeza difailkan oleh set peguam yang berbeza bertindak untuk setiap responden-responden. Setiap daripada lapan permohonan tersebut juga subjek kepada pertimbangan berbeza oleh hakim perbicaraan seperti yang dapat dilihat daripada alasan penghakiman. Selanjutnya, walaupun kesemua kelapan-lapan permohonan pembatalan tersebut dibuat berikutan A 18 k 19(1) KKM, bukan semua berdasarkan atas perenggan yang sama sub kaedah. Kelapan-lapan permohonan berbeza tersebut juga difailkan pada tarikh berbeza dan daripada nombor pendaftaran yang berbeza oleh Mahkamah Tinggi. Dalam keadaan ini ia adalah semata-mata kemudahan prosedur bahawa kelapan-lapan permohonan didengar bersama. Berasaskan ini, notis rayuan tunggal yang difailkan oleh perayu-perayu akan memerlukan soalan terhadap manakah daripada kelapan-lapan keputusan tersebut yang dirayukan oleh perayu-perayu (lihat perenggan 19–21).

(3) Autoriti yang digunakan oleh perayu-perayu dalam membantah permohonan adalah tidak membantu dalam menentukan isu-isu yang dibangkitkan dalam rayuan ini kerana fakta dalam kes-kes tersebut adalah berbeza dan juga kerana sebahagian daripada kes undang-undang yang digunakan membentuk sebahagian *ratio decidendi* kes-kes tersebut. Walaupun kes *Berjaya Development Sdn Bhd v Keretapi Tanah Melayu Sdn Bhd* [2014] 4 MLJ 606 seperti membantu perayu-perayu, mahkamah dalam kes tersebut memutuskan bahawa pemfailan notis rayuan berkaitan ketiga-tiga keputusan adalah tidak betul kerana kabur dan tidak menentu. Sama juga dengan notis rayuan ini memberi gambaran bahawa rayuan adalah hanya terhadap satu keputusan yang melibatkan kesemua responden. Ia tidak menyampaikan dengan cukup jelas

keputusan tertentu memihak kepada responden tertentu yang mana dirayukan oleh perayu-perayu. Ini membuatkan notis tersebut tidak betul kerana kekaburan dan ketidaktentuan (lihat perenggan 24–25 & 27–30).

(4) Kecacatan dalam notis rayuan adalah serius dan tidak boleh diselamatkan oleh A 1A KKM kerana ia adalah dalam bidang kuasa mahkamah. Bantahan yang dibangkitkan oleh responden-responden adalah berdasarkan atas kehendak statutori, syarat duluan untuk memenuhi rayuan ini dan bukan semata-mata luar aturan yang boleh diketepikan. Dengan itu, perayu-perayu patut sama ada memfailkan tujuh notis rayuan secara berasingan atau secara alternatif memfailkan satu notis rayuan dengan menetapkan butir-butir setiap keputusan yang dirayukan (lihat perenggan 31–32).]

Notes

For cases on notice of appeal, see 2(1) *Mallal's Digest* (5th Ed, 2015 Reissue) paras 1734–1735.

Cases referred to

Abdul Jalal bin Ahmad and Ors v Pegawai Pemegang Harta Cawangan Negeri Sembilan and Ors [2005] 1 MLJ 736, HC (not folld)

Berjaya Development Sdn Bhd v Keretapi Tanah Melayu Sdn Bhd [2014] 4 MLJ 606,CA (consd)

Dixon v Allgood (1999) Times, 30 April, CA (not folld)

Hawes v Chief Constable of Avon and Somerset Constabulary (1993) Times, 20 May, CA (not folld)

Rasheed v Secretary of State for the Home Department; Mughal v Secretary of State for the Home Department; Bashir v Secretary of State for the Home Department; and other applications [2014] EWCA Civ 1493, CA (not folld)

Woodsville Sdn Bhd v Tien Ik Enterprise Sdn Bhd & Ors and Other Appeals [2005] 4 MLJ 218, CA (not folld)

Legislation referred to

Rules of Court 2012 O 1A, O 18 r 19(1), Form 1

Rules of the Court of Appeal 1994 rr 5, 103, 104

Appeal from: Civil Suit No 24NCVC–281–06 of 2014 (High Court, Kuala Lumpur)

Mohd Hafarizam Harun (Hafarizam Wan & Aisha Mubarak) for the first and second applicants.

Dhinesh Bhaskaran (Denise Tan Kae Ji with him) (Shearn Delamore & Co) for the third applicant.

Archana Rajagopal (Thangaraj & Assoc) for the fourth applicant.

Darryl SC Goon (Zul Rafique & Partners) for the fifth and sixth applicants.
Satharuban Sivasubramaniam (Satha & Co) for the seventh applicant.
Chong Ian Shin (Arupalam & Co) for the ninth applicant.
Americk Sidhu (Americk Sidhu) for the respondents.

Abdul Rahman Sebli JCA:

[1] This is our common judgment in respect of all eight applications filed by the respondents.

[2] In the High Court at Kuala Lumpur, the appellants filed a civil suit against the respondents for the tort of conspiracy to cause injury by unlawful means. For the record, the first respondent is the serving Prime Minister of Malaysia whilst the second respondent is his wife.

[3] The respondents who were represented by seven different sets of lawyers filed eight separate applications to strike out the suit on the common ground that the writ and amended statement of claim did not disclose any reasonable cause of action, was scandalous, frivolous and vexatious and/or an abuse of the court process. All eight applications were filed pursuant to O 18 r 19(1) of the Rules of Court 2012 ('the Rules').

[4] The applications by the first and second respondents were supported by the affidavit of Dato' Seri Mohd Najib bin Tun Abdul Razak, the third respondent by the affidavit of Ahmad Johari bin Abdul Razak, the fourth respondent by the affidavit of Dato' Mohd Nazim bin Tun Abdul Razak, the fifth and sixth respondents by the affidavit of Tan Sri Cecil Wilbert Mohanaraj Abraham, the seventh respondent by the affidavit of Zainal Abidin bin Muhayat, the eight respondent by the affidavit of Deepak Jaikishen a/l Jaikishan and the ninth respondent by the affidavit of Arulampalam a/l Mariampillai.

[5] After hearing arguments on 20 November 2014, the learned judge reserved judgment to 11 December 2014, on which date she allowed the respondents' applications and struck out the writ and amended statement of claim. In the penultimate paragraph of her grounds of judgment, the learned judge made the following pronouncements:

> Accordingly Enclosures 17, 19, 25, 29, 30 and 33 are allowed with costs and Enclosure 21 and 23 are also allowed but with no order as to costs. The Writ and the Amended SOC dated 23.6.2014 against all the Defendants are hereby struck out.

[6] From the pronouncements, it is patently clear that she made eight similar but separate decisions, namely for encl 17 (first and second respondents), encl

19 (fourth respondent), encl 21 (third respondent), encl 23 (fifth and sixth respondents), encl 25 (seventh respondent), encls 29 and 30 (ninth respondent) and encl 33 (eighth respondent). Two different orders were made on costs.

[7] Dissatisfied with the decisions, the appellants filed an appeal to this court vide notice of appeal dated 8 January 2015. This was the sole and only notice of appeal filed by the appellants and is couched in the following terms:

> TAKE NOTICE THAT A Santamil Selvi a/p Alau Malay @ Anna Malay, Kishen a/l Balasubramaniam, Menaga a/p Balasubramaniam and Reeshi a/l Balasubramaniam, being dissatisfied with the decision of the Honourable Justice Datuk Hasnah bte Dato' Mohamed Hashim given at the High Court Kuala Lumpur on the 11th day of December 2014, appeals to the Court of Appeal against the whole of the said decision granting the Order-in-Terms of all the Defendants' applications to strike out the Plaintiffs' claims under Order 18 rule 19(1) of the Rules of Court 2012.

[8] The appeal came up for hearing before us on 10 April 2015. Except for the eighth respondent (Deepak Jaikishan), the rest of the respondents by seven separate notices of motion applied to have the appeal struck out on the ground that the notice of appeal was bad in law. It was argued that since seven orders were drawn up and seven sealed orders issued by the High Court, seven notices of appeal should have been filed by the appellants instead of only one.

[9] The appellants took a different position. Their stand was that even though the hearing before the High Court involved separate applications by different respondents, the hearing of the matter took place simultaneously and the judgment of the High Court was embodied in one single written grounds of decision. Figuratively speaking, the appellants' answer to the respondents' argument was that the seven seas may be seven continents apart but all seven converge towards land.

[10] It was submitted that since the grounds of judgment covered all arguments put forth by all parties, which were all premised on the same grounds that were ventilated before the learned judge, a single notice of appeal encompassing all the orders made was perfectly in order.

[11] Having heard the competing arguments, we unanimously allowed the respondents' applications and struck out the appellants' appeal pursuant to the powers conferred upon us by rr 103 and 104 of the Rules of the Court of Appeal 1994 ('the RCOA'). These are our grounds:

1. Rule 5 of the RCOA stipulates as follows:

5 Appeal to be by re-hearing on notice.

(1) Appeals to the Court of Appeal shall be by way of re-hearing and shall be brought by giving notice of appeal.

(2) Security for costs shall be given as provided in rule 17.

(3) A notice of appeal shall substantially be in Form 1 in the First Schedule.

(4) An appellant may appeal from the whole or part of a judgment or order and the notice of appeal shall state whether the whole or part only, and what part, of the judgment or order is complained of.

[12] Our attention was drawn to sub-r (3) which provides that the notice of appeal shall substantially be in Form 1 in the First Schedule. For ease of reference, we reproduce below Form 1 of the First Schedule:

NOTICE OF APPEAL

Take notice that.....being dissatisfied with the decision(s) of the Honourable Mr Justice.....given at.....on the.....day of.....19.....appeals to the Court of Appeal against

[the whole of the said decision(s)

either/or [such part only of the said decision(s)

[as decides that

(set out details)

Dated this.....day of.....19.....

.....

Applicant

Solicitor for the Appellant

[13] It is, therefore, a statutory requirement that the notice of appeal must be in the prescribed Form 1. We agree with learned counsel for the first and second respondents that the RCOA envisages two situations: one where a dissatisfied party appeals against one decision and second, where a dissatisfied party appeals against more than one decision. To that, we must add that it includes also a situation where the dissatisfied party appeals against part only of the decision or decisions given.

[14] In our view, where the appeal is against one decision involving a single respondent or involving more than one respondent in a joint action, it will be in order for the appellant to state in a single notice of appeal that he is appealing against 'the whole of the said decision' without setting out the details of the decision appealed against. But where the appeal is against more than one decision arising from separate interlocutory applications made by different

parties to the action, it is incumbent on the appellant to set out the details of the decisions in the notice of appeal.

[15] In the present case, since more than one decision was given by the High Court in favour of nine different applicants arising from eight separate and distinct applications, it was imperative for the appellants to set out the details of each and every one of the decisions that they were appealing against. We do not think it was sufficient for the appellants to state in general terms in a single notice of appeal that their appeal was against 'the whole of the said decision' (in the singular) without specifying the particulars of the decisions appealed against.

[16] Likewise, a general reference to 'the order-in-terms of all the defendants' applications to strike out' is not in our view sufficient compliance with the statutory requirement to set out the details. It was wrong and misleading for the appellants to refer to the eight decisions as being a 'decision' against 'all' the defendants when this was not a joint application by the nine applicants. In one respect at least, the decisions were not similar in that the learned judge made two different orders on costs.

[17] Given the fact that there were eight separate applications before the court, the learned judge was procedurally bound to give eight separate decisions and not just one. Indeed eight decisions were given by the learned judge in the instant case. The reason why only eight decisions were given although there were ninth applicants involved was because the ninth respondent filed two applications which were heard together, namely encl 29 and encl 30. Only seven orders were drawn up and only seven sealed orders were issued by the court because only seven sets of solicitors were involved.

[18] At the risk of repeating ourselves, we must stress the point that although the eight striking out applications were heard together before a single judge and judgment delivered on a single date, the fact is, separate decisions were given for each of the eight applications. It is inconceivable that the eight decisions made by the learned judge were embodied in one single decision. That is not borne out by the record, nor is it a logical proposition. The fact that only one grounds of decision was delivered does not alter the fact that eight separate decisions were given.

[19] It is an undisputed fact that the eight applications were premised on different facts, different issues and different arguments by different lawyers. In addition to that, there were seven different affidavits filed by seven different sets of solicitors. Each of the eight applications was also the subject of different consideration by the learned judge as can be seen from the grounds of judgment. It is abundantly clear she dealt with each application separately.

[20] It must further be noted that although all eight applications were made pursuant to O 19 r 19(1) of the Rules, not all were based on the same paragraphs of the sub-rule. The first and second respondents' applications were grounded on paras (a), (b) and/or (d), the third respondent on paras (a) or (b) and/or (d), the fourth respondent on paras (a), (b), (c) and/or (d), the fifth and sixth respondents on paras (a), (b), (c) and/or (d), the seventh and eight respondents on paras (a), (b), (c) and/or (d) and ninth respondent on paras (a), (b) and/or (d).

[21] The eight applications were also filed on different dates and given different registration numbers by the High Court and since no formal order for consolidation was made, it was a mere procedural convenience that the eight applications were heard together. Against this backdrop, the single notice of appeal filed by the appellants against 'the whole of the said decision' and against 'all the defendants' applications' begs the question: Which of the eight decisions were the appellants appealing against?

[22] The appellants' argument would be tenable if their appeal was against the decision of the High Court in respect of the main suit. In that situation a single notice of appeal would be proper as the ninth respondents were joint defendants and the reliefs prayed for against each of them were pleaded in a single statement of claim.

[23] Further, the court's decision would be to confined to the main suit and to no others. In short, it would be against that one decision that the appellants' appeal would be directed at, unlike the present case where the appeal was directed at eight different decisions in respect of eight different applications by ninth different applicants.

[24] In opposing the applications, learned counsel for the appellants relied on the following authorities: *Woodsville Sdn Bhd v Tien Ik Enterprise Sdn Bhd & Ors & Other Appeals* [2005] 4 MLJ 218; *Abdul Jalal bin Ahmad and Others v Pegawai Pemegang Harta Cawangan Negeri Sembilan and Ors* [2005] 1 MLJ 736; *Berjaya Development Sdn Bhd v Keretapi Tanah Melayu Sdn Bhd* [2014] 4 MLJ 606 *Hawes v Chief Constable of Avon and Somerset Constabulary* (1993) Times, 20 May *Dixon v Allgood* (1999) Times, 30 April; *Rasheed v Secretary of State for the Home Department; Mughal v Secretary of State for the Home Department; Bashir v Secretary of State for the Home Department; and other applications* [2014] EWCA Civ 1493.

[25] We have studied those judgments carefully and except for the decision of this court in *Berjaya Development Sdn Bhd* which we shall deal with shortly, we do not find any them to be of real assistance in determining the issue before us, firstly, because the facts are materially different and, secondly, the passages

highlighted by learned counsel are mostly remarks made in passing (obiter dicta) and do not form part of the ratio decidendi of the cases.

[26] As a matter of fact, the decision of the English Court of Appeal in *Hawes v Chief Constable of Avon and Somerset Constabulary* runs contrary to the appellants' own position. In that case it was held, inter alia, that in the case of one hearing of more than one action, it was still necessary to file a notice of appeal in respect of each action.

[27] As for the case of *Berjaya Development Sdn Bhd*, although the facts are not on all four with the facts of the present case, we find the judgment to be closest to the point under consideration. One of the issues raised in that case was whether it was possible for one notice of appeal to be filed for the three decisions that were given on two different dates by the High Court. It was held that this was possible provided the applications were heard together and the decision on the applications was given on a single date and the notice of appeal clearly described the applications involved and the respective decisions.

[28] At first blush, this part of the judgment appears to be favourable to the appellants. But the court went on to hold that the filing of one notice of appeal in respect of all three decisions by the appellant was improper for being ambiguous and uncertain and that the proper way would have been to file three notices of appeal, one in respect of each decision.

[29] The notice of appeal was held to be uncertain because it did not state which of the three decisions was decided on 18 September 2012 and which was decided on 10 October 2012. For context, we reproduce below the material part of the impugned notice of appeal:

> NOTICE RAYUAN
>
> SILA AMBIL PERHATIAN bahawa Responden yang dinamakan di atas tidak berpuas hati dengan keputusan yang diberikan oleh Yang Arif Hakim Nalini Pathmanathan di Mahkamah Tinggi Kuala Lumpur pada 18 September 2012 dan 10 Oktober 2012 menolak semua permohonan Responden bertarikh 5 September 2012, 14 September 2012 dan 18September 2012 tanpa hujahan oleh kedua belah pihak, merayu kepada Mahkamah Rayuan terhadap keseluruhan keputusan tersebut.

[30] By way of comparison, the notice of appeal in the case before us, which was expressed to be against the whole of the 'decision' and against 'all' the respondents, gives the impression that the appeal was against one decision only and involving all the respondents. It does not convey with sufficient clarity which particular decision favouring which particular respondent were the

appellants appealing against. This makes the notice bad for ambiguity and uncertainty.

[31] In our considered opinion, the defect in the notice of appeal is fatal and cannot be cured by O 1A of the Rules. What the appellants should have done was either to file seven separate notices of appeal or alternatively to file one notice of appeal but setting out the details of each decision appealed against. Neither was done by the appellants. On our part we take the view that the second option is the more practical option as it will avoid the filing of multiple records of appeal.

[32] Given the factual matrix of the case, we do not think that the objections raised by the respondents to the notice of appeal can be trivialised as being mere procedural or technical acrobatics. It goes to the jurisdiction of the court. The objections raised are premised on a statutory requirement, a condition precedent to this court entertaining the appeal and not a mere irregularity that can be waived.

[33] It was for all these reasons that we allowed the applicants' applications and struck out the appeal with costs. As for the eigth respondent who did not apply for striking out of the appeal, we have fixed another date to hear the appellants' appeal involving him.

Applications allowed and appeal struck out with costs.

Reported by Kohila Nesan